

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--------------------------|---|------------------------|
| In the Matter of |) | File No. EB-08-SE-705 |
| |) | |
| MetroPCS California, LLC |) | Acct. No. 201132100026 |
| |) | |
| |) | FRN No. 0005824974 |

ORDER

Adopted: June 1, 2011

Released: June 2, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission and MetroPCS California, LLC (“MetroPCS”). The Consent Decree terminates an investigation by the Bureau into MetroPCS’s possible violations of Part 4 of the Commission’s rules regarding the reporting of network outages.¹

2. The Bureau and MetroPCS have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether MetroPCS possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 4.1 *et seq.*

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Roger D. Linqvist, President and CEO, MetroPCS Communications, Inc., 2250 Lakeside Boulevard, Richardson, TX 75082 and to Carl W. Northrop, Esq., counsel for MetroPCS, Paul, Hastings, Janofsky, Walker LLP, 875 15th Street, NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission (“Bureau”) and MetroPCS California, LLC (“MetroPCS” or “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation into whether MetroPCS violated Section 4.9(e) of the Commission’s Rules (“Rules”).¹

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s April 8, 2009 letter of inquiry² relating to whether MetroPCS violated Section 4.9(e) of the Rules.³
 - (h) “MetroPCS” means MetroPCS California, LLC, its affiliates, predecessors-in-interest and successors-in-interest.

¹ 47 C.F.R. § 4.9(e).

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mark A. Stachiw, Executive Vice President Metro PCS Communications, Inc. (“LOI”)

³ 47 C.F.R. § 4.9(e).

- (i) “Parties” means MetroPCS and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 4.9(e) of the Rules, a wireless communications provider is required to submit to the Commission an electronic Notification within 120 minutes after discovering that it has experienced a network outage of at least 30 minutes duration: (1) of a Mobile Switching Center; (2) that potentially affects at least 900,000 user minutes of either telephony or paging; (3) that affects at least 1,350 DS3 minutes; (4) that potentially affects any special offices and facilities, as defined in Section 4.5(b) of the Rules, other than airports through direct service facility agreements⁴; or (5) that potentially affects a 911 special facility, as defined by the Rules. Within 72 hours after discovering such an outage, a wireless communications provider is required to submit electronically an Initial Communications Outage Report, and within 30 days after discovering such an outage, a wireless communications provider is required to submit electronically a Final Communications Outage Report.

3. MetroPCS is a wireless service provider offering commercial mobile radio service (“CMRS”) as defined in the Rules and is subject to the network outage reporting regulations in Part 4 of the Commission’s Rules with respect to its provision of CMRS.

4. In 2008, the Public Safety and Homeland Security Bureau referred MetroPCS to the Enforcement Bureau for potential violations of the network outage reporting requirements specified in Section 4.9(e) of the Rules. On April 8, 2009, the Bureau initiated the Investigation by issuing the LOI to MetroPCS. The LOI directed MetroPCS, among other things, to submit a sworn written response to a series of questions relating to MetroPCS’ compliance with the Commission’s network outage reporting rules.⁵ MetroPCS responded to the LOI on May 8, 2009.⁶ The Bureau and MetroPCS executed a Tolling Agreement on May 26, 2009⁷ and thereafter executed a series of Tolling Agreement Extensions.⁸

⁴ 47 C.F.R. § 4.5(b).

⁵ See LOI.

⁶ See Letter from J. Christopher Luna, Staff Vice President and Assistant General Counsel, MetroPCS, to Susan M. Stickley, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (“LOI Response”).

⁷ See Tolling Agreement, File No. EB-08-SE-705, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Roger D. Linquist, President and CEO, MetroPCS Communications, Inc. (May 26, 2009).

⁸ See Tolling Agreement Extensions, File No. EB-08-SE-705, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Roger D. Linquist, President and CEO, MetroPCS Communications, Inc. (September 4, 2009, January 7, 2010, March 23, 2010, June 16, 2010, September 15, 2010, and November 15, 2010) and Tolling Agreement Extension, File No. EB-08-SE-705, executed by and between Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Roger D. Linquist, President and CEO, MetroPCS Communications, Inc. (December 23, 2010).

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** MetroPCS agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of said Investigation, MetroPCS agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence with respect to this Investigation, the Bureau will not use the facts developed in the Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against MetroPCS concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not, in the absence of new material evidence, use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against MetroPCS with respect to MetroPCS' basic qualifications, including its character qualifications, to be a Commission licensee.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, MetroPCS agrees to have in place, within thirty (30) days of the Effective Date, a Compliance Plan designed to facilitate MetroPCS' future compliance with the Communications Act, the Commission's Rules, and the Commission's Orders related to Section 4.9 of the Commission's Rules. The Compliance Plan will include the following components:

- (a) **Compliance Training Program.** MetroPCS shall establish and maintain an FCC outage reporting training program, as detailed below, for all employees who are responsible for gathering and/or analyzing information regarding MetroPCS' network outages for purposes of compiling and/or submitting MetroPCS' outage reports to the Commission, entering that information into any MetroPCS database(s) and/or record(s) that forms the basis of MetroPCS' reporting of network outages to the Commission, or compiling and/or submitting MetroPCS' outage reports to the Commission.⁹

- i. MetroPCS' Compliance Training Program shall be designed to address, at a minimum, the FCC's Rules governing the reporting of network outages, the information and calculations required by the FCC's Rules to determine whether an outage is reportable

⁹ Under this provision, MetroPCS will not be required to provide outage reporting compliance training to employees whose responsibilities do not include gathering, analysis, or data entry of information regarding MetroPCS' network outages or compiling MetroPCS' outage reports, or whose involvement in MetroPCS' outage reporting activities is limited to performing job functions that are not specific to outage reporting under the Commission's Rules.

under the FCC's Rules, the time periods during which notifications and reports of reportable outages must be submitted to the FCC and the methods and procedures adopted by MetroPCS in an effort to identify and report those network outages in accordance with the FCC's reporting criteria in order to facilitate compliance with the FCC's outage reporting Rules. The training program also shall include information on the potential internal and regulatory consequences of failing to comply with MetroPCS' methods and procedures and/or the FCC's outage reporting requirements.

ii. MetroPCS shall provide the foregoing outage reporting training within six months of the Effective Date and will update the training at least annually for all of its employees who are responsible for gathering and/or analyzing information regarding MetroPCS' network outages for purposes of compiling and/or submitting MetroPCS' network outage reports to the Commission, entering that information into any MetroPCS database(s) and/or record(s) that forms the basis of MetroPCS' reporting of network outages to the Commission, or compiling and/or submitting MetroPCS' outage reports to the Commission. MetroPCS also will provide training to all new employees responsible for these activities within three (3) months of their hiring date.¹⁰

iii. MetroPCS periodically shall take such steps as are reasonable, necessary and appropriate to update and enhance the foregoing training regarding the FCC's outage reporting requirements.

- (b) **Compliance Reports.** MetroPCS will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of MetroPCS, stating that the officer has personal knowledge that MetroPCS has established operating procedures intended to comply with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Ricardo.Durham@fcc.gov, and Linda Nagel, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Linda.Nagel@fcc.gov.
- (c) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire two (2) years after the Effective Date.

10. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against MetroPCS or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by MetroPCS with the Act, the Rules, or Commission Orders.

11. **Voluntary Contribution.** MetroPCS agrees to make a voluntary contribution to the United States Treasury, in the amount of forty five thousand dollars (\$45,000) within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar

¹⁰ See *supra* note 4.

instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). MetroPCS will also send electronic notification on the date said payment is made to Ricardo.Durham@fcc.gov and Linda.Nagel@fcc.gov.

12. **Waivers.** MetroPCS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. MetroPCS shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither MetroPCS nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and MetroPCS shall waive any statutory right to a trial *de novo*. MetroPCS hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which MetroPCS does not expressly consent), that provision will be superseded by such Commission Rule or Order.

15. **Successors and Assigns.** MetroPCS agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees, and the Commission agrees that the provisions of this Consent Decree shall inure to the benefit of such successors, assigns and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, MetroPCS does not admit noncompliance, violation or liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representatives.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Roger D. Linnquist
President and CEO
MetroPCS California, LLC

Date